

§ 1005.22

(j) Except with respect to any penalty, assessment or exclusion remanded by the ALJ, the DAB's decision, including a decision to decline review of the initial decision, becomes final and binding 60 days after the date on which the DAB serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(k) (1) Any petition for judicial review must be filed within 60 days after the DAB serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(2) In compliance with 28 U.S.C. 2112(a), a copy of any petition for judicial review filed in any U.S. Court of Appeals challenging a final action of the DAB will be sent by certified mail, return receipt requested, to the Chief Counsel to the IG. The petition copy will be time-stamped by the clerk of the court when the original is filed with the court.

(3) If the Chief Counsel to the IG receives two or more petitions within 10 days after the DAB issues its decision, the Chief Counsel to the IG will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period.

[57 FR 3350, Jan. 29, 1992, as amended at 63 FR 46691, Sept. 2, 1998]

§ 1005.22 Stay of initial decision.

(a) In a CMP case under section 1128A of the Act, the filing of a respondent's request for review by the DAB will automatically stay the effective date of the ALJ's decision.

(b) (1) After the DAB renders a decision in a CMP case, pending judicial review, the respondent may file a request for stay of the effective date of any penalty or assessment with the ALJ. The request must be accompanied by a copy of the notice of appeal filed with the Federal court. The filing of such a request will automatically act to stay the effective date of the penalty or assessment until such time as the ALJ rules upon the request.

(2) The ALJ may not grant a respondent's request for stay of any penalty or assessment unless the respondent posts a bond or provides other adequate security.

42 CFR Ch. V (10-1-99 Edition)

(3) The ALJ will rule upon a respondent's request for stay within 10 days of receipt.

§ 1005.23 Harmless error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in any act done or omitted by the ALJ or by any of the parties, including Federal representatives such as Medicare carriers and intermediaries and Peer Review Organizations, is ground for vacating, modifying or otherwise disturbing an otherwise appropriate ruling or order or act, unless refusal to take such action appears to the ALJ or the DAB inconsistent with substantial justice. The ALJ and the DAB at every stage of the proceeding will disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

PART 1006—INVESTIGATIONAL INQUIRIES

Sec.

1006.1 Scope.

1006.2 Contents of subpoena.

1006.3 Service and fees.

1006.4 Procedures for investigational inquiries.

1006.5 Enforcement of a subpoena.

AUTHORITY: 42 U.S.C. 405(d), 405(e), 1302 and 1320a-7a.

SOURCE: 57 FR 3354, Jan. 29, 1992, unless otherwise noted.

§ 1006.1 Scope.

(a) The provisions in this part govern subpoenas issued by the Inspector General, or his or her delegates, in accordance with sections 205(d) and 1128A(j) of the Act, and require the attendance and testimony of witnesses and the production of any other evidence at an investigational inquiry.

(b) Such subpoenas may be issued in investigations under section 1128A of the Act or under any other section of the Act that incorporates the provisions of section 1128A(j).

(c) Nothing in this part is intended to apply to or limit the authority of the Inspector General, or his or her delegates, to issue subpoenas for the production of documents in accordance with 5 U.S.C. 6(a)(4), App. 3.